Business for the Rule of Law

CONSULTATION WORKSHOP REPORT

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United States, New York

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HOST/FACILITATOR:
UN Global Compact, LexisNexis and Debevoise & Plimpton
Part I: Executive Summary

1. UN Global Compact and Business for the Rule of Law Overview
   - Participants raised issue of how to measure progress when it comes to the implementation of certain initiatives and development goals, such as for example the UN Sustainable Development Goals or the UN Global Compact B4ROL Framework.
   - Participants suggested adding companies’ names next to the Examples of Business Actions in support of the rule of law prepared by Global Compact to create awareness and incentives for future actions.
   - Participants further suggested getting feedback from companies that are members of the Global Compact to add further examples of business actions.
   - Participants emphasized the importance of creating some sort of repository to make the UN Global Compact B4ROL Framework and, in particular, the Examples of Business Action, publicly available.
   - Participants discussed the idea of businesses creating their own action plans based on the B4ROL Framework.
   - Businesses should create toolkits to be used within their business to promote the ROL.

2. Business Support for the Rule of Law in Practice [Explained]
   - Participants emphasized that since countries are beginning to develop national action plans, it is a key moment to develop the support pillar now.

3. Business Case for Supporting the Rule of Law
   - ROL creates level playing field / set of expectations / predictability / certainty / transparency and participation in the decision-making process / qualified and independent judiciary / accountability of those in power.
   - Local private sectors are the engine of growth.
   - No product or service has value/substance without the ROL.

4. Business Actions and Business Examples in Support of the Rule of Law

   Business Action No.2: Accountability of all persons, institutions and entities to laws:
Key is for a business to respect business actions internally first. Businesses need to lead by example and be transparent.

Business example: Businesses should respect the equality of all by treating senior and junior officials/employees equally.

**Business Action No. 3: Equal enforcement of the law:**

- While businesses should be active, they cannot overstep and interfere with judicial independence.
- Business example: the whole electronic industry vetoed conflict minerals as a whole, beyond strictly legal requirements.

**Business Action No. 4: Make justice accessible to all:**

- Developing countries lack institutional mechanisms which are necessary to advocate with the government. Int’l organizations are therefore helpful to act as a channel to communicate locally with community and government.
- Business example: Humanitarian project in the Amazonian region of Peru made use of theatre and cartoons to get messages on human rights through to the local people.

**Business Action No. 5: Respect contract and property rights:**

- Assisting with technology enabling, inter alia, recording of (i) property titles and changes thereto and (ii) judicial decisions and making them available to the public, unless properly restricted for confidentiality and other sensitivity purposes.
- Business example: Two multinational technology companies are addressing certain technology issues, including mapping and recording, in Myanmar.

**Correct business actions to include in the Framework?**

- Participant suggested being more precise when drafting the Business Actions and actually defining terms.

**What business actions are missing?**

- Take into consideration tax issues and policies.
- Macro-action: Businesses should start internally to promote the rule of law - to make it their DNA. Importance of having internal controls in place and the message needs to come from the top.
- Businesses should support and fund other organisations/civil societies and NGOs that promote the ROL and create partnerships locally.
5. **Call to Action (to Business and by Business) to Support the Rule of Law**

- Create awareness about the ROL (ROL is an amorphous term).
- Identify the leaders within a business to create a community.
- Businesses must learn how others are doing things and solving problems. Importance of compiling data that is already out there.
- Enforcement of anti-bribery polices and laws to create and support judicial integrity.
- Provide training to people to run institutions.
- Government to Government collaboration to simplify processes for obtaining licenses, create and empower credit bureaus and establish proper legal framework for secure transaction registries.
- Governments should toughen their stance against corruption to secure judicial integrity.

6. **Mobilizing Business to Support the Rule of Law**

- Create awareness about the ROL.
- Identify business leaders within a business who are/will be spearheading the process and then build the community around them, including connecting anyone who is willing to help with others who are working towards the same goal/on the same initiatives.
- Build a digital community (Framework and Business Examples) that core contributors to the Framework would have access to but consider also sharing it with other businesses.
- Coordinate between other intergovernmental international associations/organization since there already exist multiple initiatives for the ROL (don’t need to reinvent the wheel/duplicate work).
- Consider cross functions internally and externally in supporting the ROL.
- Develop tools within a business to reinforce the RL within an organization.

7. **Any other comments or questions (including “quotable quotes” that may be included in the Framework)**

n/a
Part II: Workshop Report

1. UN Global Compact and Business for the Rule of Law Overview

- One participant raised the issue of how to measure progress (i.e. implementation of the UN Sustainable Development Goals (“SDGs”)). In particular the developing countries often times face challenges in implementing these goals (including the rule of law) because they lack the necessary funds.

- Participants agreed that adding a company's names next to the Examples of Business Actions in support of the rule of law prepared by Global Compact is important. Participants also agreed that it would be prudent to consult with the individual companies and get their sign off to make sure that the examples portray the right actions taken by a company.

- In particular in the area of the environment it would be prudent to confirm with governments about governmental policies because governmental policies might not necessarily show the rule of the land.

- Also instead of saying “various” in some of the examples, participants agreed that it should list the concrete names of the companies that have implemented these business actions. Having concrete names of companies next to each example would create awareness and incentives for future actions. It would also give governments opportunities to gain insight into corporate policies.

- Participants also suggested asking for feedback from companies that are members of the Global Compact to add further examples of business actions.

- It would be very helpful to create some sort of repository to make the UN Global Compact B4ROL Framework and, in particular, the Examples of Business Actions, publicly available. This would help governments and businesses to show that rule of law principles can indeed be implemented and how they have been implemented by the different stakeholders. However, at the same time, it is important to avoid a “name and shame game” when singling out governments or businesses that have not followed the rule of law.

- Participants agreed that it would be very important to include examples also from local companies (not just multinationals); this in an effort to work on the local capacity development to help small/medium size companies locally to implement the principles/Framework.

- Participants also considered organizing the Examples of Business Actions by sector and further within a sector divide the examples into sub groups.
2. Business Support for the Rule of Law in Practice [Explained]

- Countries are beginning to develop national action plans, so it's a key moment to develop the support pillar; one cannot assume that all regions are in agreement on the level of compliance with the rule of law.

3. Business Case for Supporting the Rule of Law

a. What does the rule of law mean in this country?
   - Transparency and participation in the decision-making process. Input from various stakeholders is necessary. In particular, the private sector should be involved when new laws/regulations are being rolled out.
   - Qualified and independent judiciary that establishes timely and cost efficient rules and judicial decisions.
   - Predictable and fair enforcement.
   - Certainty of outcome ultimately influences business decisions, including judiciary and arbitration.
   - Level playing field / set of expectations / predictability / certainty.
   - Protecting the most vulnerable and empowering them with a voice.
   - Matching society and business expectations.
   - Set of rules companies can expect from a government.
   - Participants were not in accord whether the availability of a democratic process was necessary.
   - Accountability of those in power.
   - Availability of record of ownership.

b. How does business benefit when there is a strong rule of law? Alternatively, what challenges exist for business when the rule of law is weak?
   - No product or service has value/substance without the ROL.
   - Insurance companies are usually the first ones to enter emerging markets and lay the groundwork for businesses (see for example a multinational insurance company's “rule of law fund”).
   - Security for promises and enforcement.
There is a clear interest from businesses to receive basic demographic information from a country to be able to start and grow a business in such country. Business need to know their market.

Availability of birth certificates (legal identity) and property registrations is key in supporting/enforcing the rule of law. Registration of property and title is also key.

Local private sectors are the engine of growth.

Collaboration within the same industry is key to promote the ROL.

4. Business Action and Business Examples in Support of the Rule of Law

a. Explore the meaning of the business action and how it relates to business.

• Business Action No. 2:
  o The key is for a business to respect business action internally first.
  o OECD study of corruption cases around the world found that 2/3 of bribery cases that lead to a conviction were in developed countries.
  o There is a perception in the public that big businesses get special treatments or favours; Businesses can lead by example by being transparent. Since more information is publicly available nowadays this will help ordinary people to understand what their rights are and how they can hold local governments accountable for any breaches of those rights.

• Business Action No. 3:
  o While businesses should be active, they cannot overstep and interfere with judicial independence. For example: The Chamber of Commerce of a U.S. state supported impeachment of a S. Ct. Justice because they did not agree with a judicial outcome. Issues like judicial campaign funding and lobbying must be revisited and compared with, for example, the right of free speech.
  o It's important to stand up to the ROL when it's hard and unpopular because companies may come under scrutiny. For example: When a law firm decided to represent Guantanamo detainees, some companies pulled back as clients. Companies could give statements to distance themselves from unpopular representation but to put undue pressure on law firms goes against the ideal of the ROL. There is a need to create an environment where businesses (and law firms) feel safe in supporting certain topics on the ROL agenda without fearing backlash.
  o The issue of bribery is also very important. What does it mean to support corruption? Can you support corruption despite not actually engaging in it? Where do you draw the line? Do you have to stop doing business (e.g. not enter into gov’t contracts) or can
you just look the other way? Example: A large multinational company in Myanmar
was asked for a facilitation payment but refused.

- How transparent should lobbying practices be?

**Business Action No. 4:**

- Important to make law public and available to the people.
- There are several issues related to work force: gender-based violence and access to a
  health system. Businesses need to make sure that they have a happy work force
  (talent-dimension) because having healthy available talents is good for business.
- Usually developing countries lack institutional mechanisms which are necessary to
  advocate with the government; however, businesses are not there to play the role of
  the government.
- That’s where int’l organizations are helpful, to act as a channel to communicate
  locally with community and government. Participants have experienced communities
  where everything is expected from companies as companies are the only “state
  representatives” in the local community.
- Access to legal services is also important, including training of paralegals and
  providing fellowships to local schools.
- Law firms should also engage locally.
- In the Middle East there is the issue that women don’t have any role models. One
  solution would be to have women lawyers and law enforcers (prosecutor and police
  officers) speak to women in secondary school and law schools.

**Business Action No. 5:**

- Partnering with international organizations to educate and train judges and local
  lawyers, including organizing workshops.
- Assisting with technology enabling, inter alia, recording of (i) property titles and
  changes thereto and (ii) judicial decisions and making them available to the public,
  unless properly restricted for confidentiality and other sensitivity purposes.
- Funding various programs to promote property rights (as the concept) on the
  governmental levels.
- In many jurisdictions, there are underdeveloped or under-interpreted laws and
  regulations. Thus, it is important to provide assistance in sharing precedents from
  other jurisdictions and support initiatives to establish model statutes and guiding
  interpretations.
- Businesses need help and should be guided to provide assistance to any rule of law
  programs because they might not have intrinsic skillset and predetermined objectives
focusing on the promotion and development of the rule of law. In this context, empowering GCs to take the lead and to rely on international organizations, such as UN Global Compact.

- With respect to dispute resolution, it is important to educate internally as to the dispute resolution procedures and establishing standardized processes for dispute resolution to be abided by, thus ensuring proper and precedent-setting conduct.

- Taking into account the diversity of businesses (and their business interests) and geographies (and their laws, cultures and needs), it will be important to work out what each one organization/business can contribute best, thus looking beyond global universal approach and making it more fact-specific.

b. Explore how the business action can be implemented by business by sharing an actual or hypothetical example.

- **Business Action No. 2:**
  - A multinational insurance company's rule of law fund that gives grants to specific institutions supporting and promoting the rule of law (i.e., fair voters project in the US)
  - Respect the equality of all by treating senior and junior officials/employees equally.
  - While there are challenges regarding a company's privacy requirements, businesses should make publicly available how they implement the rule of law and act by example.
  - It is important to share and publicize informing during the regulatory process and make sure that companies do not exercise undue influence over this regulatory progress.
  - Companies should have anti-corruption policies in place and openly admit when they are issues and how these issues have been resolved.
  - OECD study showed that there is a 20% tax on the cost of doing business when there is corruption, thus business should lead and act by example.
  - Business should have codes of conduct.

- **Business Action No. 3:**
  - the whole electronic industry vetoed conflict minerals as a whole, beyond strictly legal requirements.
  - Anti-Apartheid. Initiatives before sanctions: this is support, and not just respect.

- **Business Action No. 4:**
A project in South America is helping companies in the extracting industry to integrate human rights policies at operational level.

One solution for gender-based violence would be to provide training on gender-based violence to women and on how to access the local justice system.

If a company take steps to build legal structures and a predictable legal framework it ultimately ends up helping the business and its reputation.

It is important to connect different stakeholders. For example, a humanitarian project in the Amazonian region of Peru made use of theatre and cartoons to get messages on human rights through to the local people.

A project in Africa provided motorcycles so that clerks/paralegals could reach communities.

In India, because of the lack of doctors in certain communities, there has been a project that trained women to perform eye exams. The same training on a local level could be applied to disseminate access to justice.

In Afghanistan there has been a project that promotes the legal profession. It is a violence against woman project financed by the US State Department.

- **Business Action No. 5:**
  - Two multinational technology companies are addressing certain technology issues, including mapping and recording, in Myanmar.

**c. Are these the correct business actions to include in the Framework?**

- One participant suggested being more precise when drafting the Business Actions. In particular, Action item 4.b needs to be more precise. What does access to information mean? How does it interact with privacy laws?

- Additionally, the Framework uses different verbs: enhance, support etc. These verbs should be explained or defined.

- On Action items 2d and 5: because businesses have state-of-the-art knowledge about legal challenges brought by new processes, services and technologies (e.g., green business), they can be particularly helpful to the public sector in drafting new legislation and in regulating contract and property rights.

- Businesses (in addition to civil societies and NGOs) can play a key role in building institutions.
d. Are there business actions that are missing from the Framework that should be included?

- Take into consideration tax issues and policies - companies’ efforts to avoid paying taxes. Consider issue of a business engaging in ROL initiatives but at the same time that business is avoiding paying taxes in some countries. Not paying taxes might have a greater impact on the livelihood of the communities where the business operates. The counter-view is that while companies come into a country and demand changes in tax law they also make changes to the educational system in employing skilled workers. This is seen as an indirect way of “paying taxes.”

- Businesses should support and fund other organisations/civil societies and NGOs that promote the rule of law and create partnerships locally.

- Businesses should start internally to promote the rule of law - to make it their DNA. Importance of having internal controls in place and the message needs to come from the top.

- Businesses should look at stakeholders’ interest and do stakeholders mapping before entering a new market.

- Consider supply chain issues / “green” procurement / fair wages.

- Businesses must take the broad principles/business actions and make them “their own”, adapt them specifically to their industries and needs, regions in which they operate.

- Businesses should create their own action plans based on the B4ROL Framework.

- Business should create their own toolkits to be used within their business to promote the ROL.

5. Call to Action (to Business and by Business) to Support the Rule of Law

a. What are some concrete steps business can take to respect and support the rule of law?

- Awareness is key. ROL is an amorphous term. Business people need business cases to think about and engage in concrete action.

- Identify the leaders within a business to create a community.

- Businesses must learn how others are doing things and solving problems. Importance of compiling data that is already out there.

- The biggest disincentive is fear of negative reaction from governments. That can be partly addressed by companies acting together.
b. **What actions can other actors, including Government, academia and civil society take to improve legal institutions, access to justice, equality before the law, capacity building and other such action?**

- Judicial integrity: Governments can toughen their stance against corruption. It is not enough to prosecute bribe givers but it is also important to prosecute bribe takers; as long as government officials are not held accountable, problems will continue. See IBA project on judicial integrity.

- Government to Government collaboration to simplify processes for obtaining licenses; technology can make a huge impact; create and empower credit bureaus; establish proper legal framework for secure transaction registries; these are core initiatives that governments can take to help create a favourable environment.

- Academia can collaborate by giving policymakers the required know-how.

- Provide training to people to run institutions.

6. **Mobilizing Business to Support the Rule of Law**

a. **What obstacles, if any, does your organization experience that prevents it from supporting the rule of law in this country or in any other country it has an interest in, such as investments, operations, business relationships?**

- Fear of negative governmental actions.

- Lack of awareness about the rule of law.

b. **How can the UN Global Compact, and other actors, support business to take action in support of the rule of law (e.g. information sharing via webinars on specific rule of law topics, in-person events, leveraging online resources, strategic partnerships)?**

- Create more awareness about the rule of law. Identify business leaders within a business who are/will be spearheading the process and then build the community around them, including connecting anyone who is willing to help with others who are working towards the same goal/on the same initiatives.

- Invite specific institutions to come in and help — mostly relevant for smaller companies — to address certain causes/issues.

- Showcase the examples of business actions under the Framework and identify the core people and build a community.
o Create a system that matches individuals to particular needs/causes within a company.

o Build a digital community (Framework and Business Examples) that core contributors to the Framework would have access to but consider also sharing it with other businesses.

o Coordinate between other intergovernmental international associations/organization since there already exist multiple initiatives for the ROL.

o Cross function internally and externally of supporting the ROL.

7. Additional Comments, Suggestions or Questions

- The challenge is to take very broad language and come up with concrete examples.

[Workshop Report End]